Factoring in the Human Rights of the Child at Risk of Abortion

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to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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Introduction

Bill promotes obfuscation rather than clarity: it contravenes international human rights principles

This Bill [Health (Abortion Law Reform) Amendment Act 2016] is flawed. The deliberate omission of legal recognition of the unborn child targeted for an elective abortion is in direct contravention of our solemn duty to honour our promises in the international human rights instruments which Australia has ratified and which include serious commitments to provide legal protection for every child "before as well as after birth".

On November 20th, 1959, the UN General Assembly agreed that the *Universal Declaration of Human Rights* (1948) had 'recognized' the human rights of the child before birth.

This recognition of the child before birth as a juridical personality entitled to legal protection is of immense importance since the 1948 *Universal Declaration* is the foundation document of modern international human rights law. The *Universal Declaration's* recognition of the child before birth is a fundamental principle conditioning the entire field of international human rights law.

Subsequent initiatives to treat small human beings before birth as if they are not human, to subject them to direct medicalized or surgical killing , have been based erroneously on devious attempts to 'de-recognize' the unborn child as a legitimate human subject with inherent and inalienable human rights. The child before birth having been recognized by the *Universal Declaration of Human Rights* as being included in "all the members of the human family" cannot be excluded by any subsequent human rights instrument or committee or judiciary or legislature without undermining the very foundation principles of modern international human rights law.

This Bill, therefore, does not conform with the Queensland Parliament's grave duty as a main player in a truly democratic system—to build the rule of law that will function to protect the human rights of every human being *without discrimination*.

Either every human being has equal and inalienable dignity and worth as the *Universal Declaration of Human Rights* recognizes or no human being's rights are safe.

Indeed, as one best-selling author, Michael Connolly, has one of his main characters rightly observe:

"Everyone counts or no one counts".

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Section 1

Denying the humanity of a human being at risk of lethal "health" treatment constitutes a perversion of human rights law

Science and reason tell us that there is no such thing as victimless abortion.

A cult of denial is not unusual where exterminations of vulnerable 'unwanted' human beings have been authorized and carried out with impunity over a long period of time.

It is an uncomfortable truth of the human condition that when we harm another human being we seek to deny that any harm was done. History has recorded so many, many lethal violations of the human rights of defenceless human beings, and the vapid narcissistic excuses of the perpetrators, as they themselves become more and more brutalized while always maintaining that there has been no harm done to any human being who matters.

Today's perpetrators of routine lethal execution of unborn human beings in their mothers' wombs rely on extreme feminist ideological constructions of the victims of abortion as abusers of their mothers' 'rights' to justify abortion's lethal abuse and turn our gaze away from asking just what these tiny defenceless victims are guilty of that requires capital punishment. The tiny victims are aborted, it appears, "because they deserve it". This kind of ideologically driven reasoning was condemned at Nuremberg as "criminal impertinence".

Treated as chattels owned by their mothers rather than as little daughters and sons under their care, these children in their mothers' wombs are real victims. Their brutal extermination in abortion 'clinics' is largely driven all too often by exaggerated claims of potential harm these children pose to their mothers' mental and physical health.

The claim that their mothers have every right to commission them to be medically or surgically killed is based on the deeply offensive, prejudiced belief—that these tiny child victims of procured abortion, are less than human and have lesser human rights than other human beings. The offence here, dehumanization of the victims, was named by one of the judges at the Nuremberg Trials as "criminal impertinence":

> "The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of all--his very life--but it is the assassin who is the sufferer." [Nuremberg Einsatzgruppen Case (October 1946-April 1949) Volume IV/1]

The "lawful" abortion promoted in this Bill is an unconscionable reversion to the despicable notions that some human beings are "more equal" than others; and that some human beings in positions of power have ownership and killing rights over other human beings who, being powerless and dependent on another's good will, are deemed "potentially harmful" and thus expendable.

Doctors who perform elective abortions ignore the human rights principle that the rights of both patients in a pregnancy must be protected. This principle of indivisibility is a fundamental principle of modern international human rights law. All human rights are equal, inherent, inalienable and inclusive.

Decriminalization of abortion was judged and condemned at Nuremberg as “encouraging abortions”— "…protection of the law was denied to the unborn children...Abortion was encouraged…”. Even though the Nazi authorities had removed abortion from Polish domestic law, this did not nullify the fact that abortion was still judged “an inhuman act” and “a crime against humanity” and this criminality pertained “whether or not in violation of the domestic law of the country where perpetrated.”[1] That is, abortion was established to belong to that category of crime that cannot be excused by altering domestic law to condone it.

Human rights belong to every human being irrespective of age or stage of development

This Bill fails to provide legal protection for the child who is targeted before birth for an elective abortion. A just law consistent with the human rights principle of protecting every child before as well as after birth needs to state more precisely that a medical practitioner has no duty and no right to perform or assist in any action that results in loss of the child’s life **unless such an action is the unintended consequence of saving the mother’s life.**

Genuine medicine recognizes a fundamental difference between abortion, and necessary medical treatments that are carried out to save the life of the mother, even if such treatment results in the loss of life of her unborn child.

As the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) explains:

> "The Centers for Disease Control and Prevention defined legal induced abortion as an “intervention performed by a licensed clinician (e.g., a physician, nurse-midwife, nurse practitioner, or physician assistant) that is intended to terminate a suspected or known ongoing intrauterine pregnancy and produce a non-viable fetus at any gestational age.”
>
> There is a night and day difference between selective abortion and separating a mother and her unborn child for the purposes of saving a mother’s life (preterm parturition).
>
> There are times when separating the mother and her unborn child is necessary to save the life of the mother, even if the unborn child is too premature to live. In those tragic cases, if possible the life of the baby will be attempted to be preserved, and if not possible, the body of the unborn child is treated with respect, recognizing the humanity of the life which is lost in the separation.
>
> In contrast, the purpose of a selective abortion is to produce a dead baby. That is what an abortionist is paid to do: to kill the unborn child before delivering it, or to kill the child during the delivery process, as is done with partial-birth abortion. So the focus of the selective abortion procedure is on killing the unborn child, and the purpose of the selective abortion is to produce a dead baby."

[1] Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, 8 August 1945. Charter - II : Jurisdiction and general principles article 6(c)

This distinction between selective abortion and life-saving preterm parturition is critical to an understanding of the human rights of both patients. From the first knowledge of a human being's existence in the womb to the moment of death, each human life is recognized as a natural continuum and human rights belong to each member of the human family by virtue of their humanity and not by virtue of an arbitrarily designated "stage of development".

Because the right to legal protection is recognized by the *Universal Declaration* for the child "*before as well as after birth*", without discrimination, then all the other rights accorded to the child after birth must be accorded to the child before birth.

The principle "*without distinction of any kind*" must include this potentially discriminatory distinction between the child before birth and the child after birth— the prohibited distinction can be understood as being covered under the terms "other opinion" or "other status". The term "before as well as after birth" is irrevocably embedded in the foundation framework for protecting the human rights of every child. without discrimination on grounds of gender, disability, illegitimacy, father's crimes of rape or incest, or any other opinion or status which would declare the child unwanted, inferior or otherwise undeserving of human dignity and inalienable human rights.

Universal human rights law has solemnly recognized that all human beings including children before as well as after birth, with or without disabilities, are to be valued equally.

International human rights law provides very clear guidance on providing for the well-being of the unborn child and balancing it with the well-being of the child's mother:

- Legal protection is to be "special", formulated "appropriately", designed especially for the needs of children before as well as after birth. The appropriate legal protection of the right to life of the child at risk of abortion must be, of necessity by reason of their physical and mental immaturity, of a higher order than that accorded adults. All children, because of *their uniqueness — their potential and vulnerability, their dependence on adults*, should receive always more protection, never less protection than adults.[2]
- In all decisions concerning the child *the best interests of the child* principle[3] is a serious human rights obligation.
- Protection of the child's *right to life, survival and development to the maximum extent possible*; [4]
- Fulfillment of the child's *right to prenatal care* [5]
- Protection of the child's right to have his or her identity and family relations preserved and respected;[6]

[2] This principle is reaffirmed in the recent Guiding Principles of the Report of the Independent Expert for the United Nations Study on Violence against Children (1996) "*Regarding children, their uniqueness — their potential and vulnerability, their dependence on adults — makes it imperative that they have more, not less, protection from violence.*"

[3] The *Convention on the Rights of the Child (Articles 3, 9, 18, 20, 21, 37 and 40)* requires that this principle be applied to each and every proposed or existing law or policy or administrative action or court decision directly or indirectly affecting the well-being of children. [See CRC General Comment No 5 (10)]

[4] CRC Article 6

[5] CRC General Comment No 9 (46)

[6] CRC Article 8 (1) and (2)

- Ensuring the child's right to be protected from all forms of discrimination on the basis of the expressed opinions or beliefs of the child's parents.[7]

Section II

Language in the Bill designed to obfuscate rather than clarify

- **Improving clarity or adding obfuscation?**

  It is unfortunate that Mr Pyne in his introduction of this Bill was mistaken in claiming that this bill will "improve clarity":

  (i) "The bill seeks to clarify when care can be imparted..." Clearly genuine medical care can and should be imparted to both patients (mother and child) consistently throughout the natural course of the pregnancy: to deliberately harm and kill the child being nurtured in her/his mother's womb is not to be euphemized as genuine medical "care"; and

  (ii) "The bill seeks...to avoid prolonged approval and ethics processes...to substantiate lawfulness." Clearly, the reason the bill wants to avoid any serious "prolonged" scrutiny of decisions to abort children in their mothers' wombs lies in the complete failure to date "to substantiate" the "lawfulness" of procured elective abortions directed at intentionally attacking and killing selected unborn children brought to an "abortion facility" for lethal "treatment.

  Abortion law in Australia is not "settled". Abortion "rights" rest quite precariously on a very questionable inference from the term "unlawful". Sooner or later, there will be retrospective correction here in Australia of the infamous Menhennitt ruling that upon faulty research purported to find that use of the term 'unlawfully' implies that there must be lawful abortion.

  It implies no such thing. Any careful examination of the provenance of the use of the word 'unlawfully" in sections 27 & 50 in the original formulation *Offences Against the Person Act 1861* from which this wording was taken should have made it clear that such an implication is not only unwarranted but logically impermissible. It is ludicrous to claim that "the use of the word 'unlawfully' in section 27 of the same original document "implies that in certain circumstances' it may be lawful to "abandon or expose any Child, being under the Age of Two Years, whereby the Life of such Child shall be endangered, or the Health of such Child shall have been or shall be likely to be permanently injured".

[7] CRC Article 2 (2) A mother's belief or opinion that her child constitutes a deadly danger to her own psychological or physical health if her child is disabled or not the right sex, for example, is not sufficient to justify the violation of the human rights of her child trapped *in utero* "in *circumstances beyond his control*". (See UDHR Article 25)

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It is ludicrous also to claim that the use of the word 'unlawful' in section 50 means that it "may be lawful" to "carnally know and abuse any Girl under the Age of Ten Years".'

- **Disappearing the victims of abortion—the unborn children**

(i) *The Bill defines "abortion" as* causing a woman's miscarriage. But the definition is obfuscates rather than clarifies. This wording deliberately hides the real meaning of an abortion: it also means causing the death of her unborn child. So why does this bill completely disappear the second patient in every pregnancy? There is deliberate evasion of the real question here: miscarriage of what or whom?

Causing a mother's miscarriage means causing the death of her daughter or son who was being carried *i.e.*, protected and nurtured her/his mother's womb

Who is the victim of a "caused" i.e. deliberately provoked miscarriage? The law must recognize the humanity of the victim of an abortion as well as recognizing the human relationship between the victim and the victim's mother.

Neither the term "child" nor the term "mother" is present in this Bill—yet it is the mother and the unborn child who are the actual patients in a "pregnancy" and it is the life of the child-patient that is deliberately terminated in an "abortion" that is at the very heart of this Bill.

Recognition of the unborn child as a patient is present in the definition in Section 282 (4) of the Criminal Code:

> *"patient means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided"*

Why is the *unborn child*—the targeted subject of an abortion not mentioned in this Bill?

Have the drafters of this Bill succumbed to the extreme ideologically driven dogma that all pregnancies are childless?

A genuine rule of law must reject the propaganda and mindless popularity of an extreme feminism that touts a crazy mixed-up anti-scientific dehumanization of tiny daughter and sons in their mothers' wombs and then calls them 'choices'.

Extreme ideological feminists have been allowed to foster the untruth that a mother's little daughter or son being nurtured and protected in her womb is not yet a human being with human rights. They have reinvented the old fairy tale fiction that a Stork (named 'Reproductive Choice') brings the baby whose existence is instantaneously affirmed only at the moment of birth.

The irony is that this fiction has been invented and continues to be propagated at a time in history where we have never had so much detailed scientifically verifiable knowledge of the humanity of each child who is taken to the abortionist to be "terminated". A mother is able as never before to see her child through an ultrasound window to the womb; she can hear a heartbeat that is not her own.

The Queensland Parliament must not give legitimacy to this ideologically generated phenomenon of popular belief in a dogma that disappears the unborn child as an extra-legal non-person and proclaims instant motherhood only at birth. Such an absurdity is fast becoming unsustainable.

The term "woman" in this Bill should be changed to the correct term "mother" which gives appropriate recognition to the logically necessary biological relationship which should be recognized by the law between the two patients who present to qualified health practitioners in every pregnancy—the mother and her biological child.

(ii) The language used to disguise the brutality of abortion is deliberately bland:

(a) *administering a drug;* Here, the safe and natural environment of the mother's womb in which her little daughter or son is being protected and nurtured is deliberately poisoned—intentionally rendered toxic by "administering a drug".

(b) *using an instrument*; here "an instrument" is used to kill rather than to heal one of the patients in a pregnancy. It is a misuse of surgical instruments. Abortion is the only surgical operation that involves two patients that has for its purpose the direct killing of one of the patients.

(c) *any other means*: here the phrase "any other means" should be deleted : it is far too vague and offers the possibility of using extremely cruel and inhumane means such as partial-birth abortion—contrary to Australia's international human rights commitments to protect "every child….before as well as after birth" from "cruel inhuman and degrading treatment". Abortion law has failed to keep pace with rapid advances in medical science, particularly in embryology and foetal medicine and surgery. Evidence continues to mount that abortion of the life of a child at the earliest stages of the child's existence is *cruel inhuman and degrading treatment* of the child and contravenes the age-old first principle of medical treatment *primum non nocere* –"first do no harm".

Prohibition of "inhuman treatment" signifies treatment that denies the humanity of the victim—it denies the care that is owed *"*in the spirit of brotherhood*"*[8] by one human being to another. Abortion violates the child's right to be treated not just humanely (even animals are to be treated humanely), but as a human being. This right to be treated as a human being belongs inherently and inalienably to every child as a member of the human family. The child at risk of abortion is at risk of being subjected to inhuman treatment and is entitled to legal protection against such treatment.

Prohibition of "degrading treatment" refers to treatment that degrades and disparages the inherent human dignity of the child before birth. Abortion

[8] Universal Declaration of Human Rights, Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

> destroys a small dependent human being, reducing him or her to mere matter, a small unit of non-recyclable refuse to be summarily removed and discarded. Degrading terms are routinely applied to the child at risk of abortion—in the material on abortion on the World Health Organization's Web site, the child is referred to as "contents of the uterus to be expelled" and "aspirated tissue to be examined".[9]

> Abortion debases the humanity of the child, stripping the child of inherent dignity and of life itself: the child at risk of such treatment is in desperate need of "appropriate legal protection before as well as after birth".

- **Confused and contradictory language in this Bill**

Clause 20 in this Bill states:

> *(1) A person who is not a qualified health practitioner must not perform an abortion…*

This is contradicted in (3).

> *(3) A woman does not commit an offence against this section by— (a) performing an abortion on herself; or (b) consenting to, or assisting, in the performance of an abortion on herself.*

This is logically inconsistent with *A person who is not a qualified health practitioner must not perform an abortion.(1)*. This amounts to irresponsible encouragement of do-it-yourself abortions It may result in tragic repercussions. It is not consistent with the responsible educative role of the law which precludes such encouragement.

Indeed, for a Bill introduced with the stated purpose of providing "clarity", the concept of the law endorsing a pregnant woman "performing an abortion on herself" as legal (*i.e*., "does not commit an offence") only adds to the confusion.

Surely both science and reason tell us that the subject of the abortion is not "herself" –it is not *her* life that is to be "aborted" it is the life of the child being nurtured in her womb—her little daughter or son—the life of her unborn child is aborted.

Further confusion is added with the wording:

> *(3) A woman does not commit an offence against this section by*— (b) consenting to, or assisting, in the performance of an abortion on herself.

Again the term "an abortion on herself"? No, an abortion is performed on her little daughter or son—it is her daughter or son's life that is aborted –not her own life.

The act of "consenting" to the arbitrary deprivation of her daughter's life or her son's life is never a "right". A mother does not own the child in her womb—the ties are not ties of ownership but ties of deep belonging. Her tiny daughter or son belongs to her and she belongs to her child. It is the

[9] See also World Health Organization (WHO), *Safe abortion : technical and policy guidance for health systems,* Geneva: WHO, 2003, pp.34-43.

natural intimacy of two human beings, not of owner and object, or master and slave.

A mother's act of "assisting" an abortionist in the deliberate killing of a human being under their power and in their care is indefensible. The law has no authority to encourage mothers to assist in the killing of a little daughter or son in her womb by assuring her and declaring that she "does not commit an offence". This places the mother actively involved in killing of her little daughter or son above the law. Her "assistance" in the killing cannot be deemed lawful.

The truth is that we women have no "right to choose" to have the abortionist inflict a deadly harmful procedure on another human being, no matter how small or dependent or 'unwanted'. No human being has ownership and killing rights over another human being.

Adequate nutrition, the protective environment of the mother's womb, and benign medical care are "basic rights" of every new human being and because of their fundamental necessity to the nurturing of life; they are the unborn child's minimum and reasonable demands on her/his biological mother.

A mother nurturing her little daughter or son in her womb is exercising her natural duty of care. It is just the ordinary care owed by every mother to her child--nothing extraordinary--just exactly what our reproductive systems are equipped to do. It is just what our mothers did for us and what our grandmothers did for our mothers and what our great-grandmothers did for our grandmothers.

- **This Bill fails to provide for protective education of women seeking abortion**

It's part of the underlying purpose of health care legislation that all pregnant women, not just those who seek abortions, should be counselled, informed and educated as to their serious human rights duty as individuals[10] to uphold the basic human rights of other individuals, their children, and should be given clear information as to the strict conditions of necessity and proportionality that are needed for lawful abortion of any one of their children.

(i) This Bill does not meet the objectives of its critical role as an educator in the making of genuine human rights law. Current initiatives to decriminalize abortion and remove punitive measures for women who undertake abortions are misdirected. Laws against abortion are not discriminatory against women; they are aimed rather at "*protecting maternity*" which is defined as protecting both mothers and children before as well as after birth. Governments maintaining protective laws against abortion are in fact complying with the human rights obligations contained in the *Convention on the Rights of the Child* and the *Convention on the Elimination of Discrimination Against Women* (CEDAW). State parties are required not only

[10] This duty is spelled out in the *Preambles* to both *ICCPR* and the *ICESCR*:

> *Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant…*

to provide "*appropriate legislative protection for the child before as well as after birth*" but also to enact legislation "*aimed at protecting maternity*". Legislation against abortion may be understood as a special measure to protect mothers and children at risk of abortion and CEDAW declares unequivocally that "Adoption by State parties of special measures… aimed at protecting maternity shall not be considered discriminatory" (Article 4 (2)). The *International Covenant on Economic, Social and Cultural Rights* Article 10 also makes such a declaration:

> "*Special protection should be accorded to mothers during a reasonable period before and after childbirth…Special measures of protection and assistance should be taken on behalf of all children without any discrimination for reasons of parentage or other conditions*."

(ii) Laws prohibiting abortion are not just protective of the mother's true well-being as well as her child's wellbeing but also educative for the mother, her community, and the medical and legal professions concerning the underlying human rights violations that may be committed in the intentional deprivation of the life of the child at risk of abortion.

(iii) Education is our most valuable tool for eliminating attitudes of discrimination towards unborn children at risk of abortion, especially towards girl children, the children of rape or incest, and children with disabilities. Decriminalization of abortion is the wrong response to current individual and community attitudes of discrimination towards the child who is "unwanted". In an "unwanted pregnancy", the quality of "unwantedness" is not inherent in the child. The child is not to be blamed. The child is not to be punished and placed at risk of abortion. Rather, the "unwantedness" is *per se* an attitudinal attribute of the child's mother (and/or sometimes of the child's father and/or other family members and/or the community). It is this attitudinal prejudice that needs to be worked on and reformed. The child is not to be placed at risk of abortion because others reject the child as curtailing their own rights and freedoms. It is the attitudes of those responsible for the child at risk of abortion that need to be changed, not the laws on abortion. The rhetoric of "unwanted" unborn children being deleted by a mother and her doctor as "her choice" must be exposed.

(iv) It is critically important as well that all pregnant women be given full information as to their rights to demand and receive whatever assistance is necessary to enable them to carry their children safely through pregnancy and raise them in conditions of social security and human dignity. Under *UDHR* Article 25, every person, (including both the mother and the child *before as well as after birth*) has a right to a standard of living adequate for his health and well-being including food, housing, medical care and necessary social services as well as the right to security in the event of sickness, disability… **in circumstances beyond his control.** This last phrase is particularly relevant to both child and mother—the child has zero control over the circumstances in which he/she is developing, and the pregnancy itself is a natural event beyond any honourable or legitimate control by the mother. While it is the individual who "*is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant",* it is the States Parties to these Covenants that are also undertaking that responsibility. Among those rights "recognized" in the *UDHR* and the UN Covenants is the right of the child to "*special safeguards and care, including legal protection before as well as after birth*". The mother (the individual) has a duty to protect the child before as well as after birth, and the States' parties and the community have both a legal and moral duty to discourage abortion and to protect and support both the mother and the child before as well as after birth.

- **Cruel irony in the Bill's use of the phrase "Patient Protection"**

This Bill's use of the term "Patient Protection" (Division 3) is discriminatory against the second patient in a pregnancy.

It is unjust that patient protection is for one patient only: this Bill's denial of the need for any protection against lethal treatment of the second patient cannot be justified.

There is a cruel irony in using the phrase "Patient Protection": there are two patients in every pregnancy to be protected—one pregnancy, two live [see Criminal Code Section 282 (4) which recognizes the unborn child as a patient: "patient means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided"]. Protection is owed to both patients—the mother and her daughter or son being nurtured and protected in her/his mother's womb. Regrettably, in every abortion facility, only one patient is protected—the other smaller and most defenceless patient is deliberately killed.

(a) *protected area, for an abortion facility, means an area declared to be a protected area for the facility under section 23(1).*
Here is an ironic misuse of the phrase "protected area, for an abortion facility". What an arbitrary discrimination is this that Queensland legislators are being asked to provide protection for an *area* and an *facility* in which absolutely no protection is being given to the small human beings whose lives are to be deliberately terminated in that *area* and *facility*? An *area* and a *facility* are to be awarded legal protection but the children being abused, the smallest human beings exterminated in that area and in that facility are denied protection? Where is the protection for the targeted victims of an abortion facility?

(b) *protected period, for an abortion facility.*
Here, again, is ironic misuse of the term "protected*".*
What kind of legislature would institute a "protected period" for an abortion facility and at the same time be determined to deny and remove a "protected period" for the small human being nurtured for a short nine month period in her/his mother's womb?

Section III

Human rights are by definition inherent and inalienable: this Bill attempts to remove those rights from targeted unborn children

It has been well-established that the human rights of the unborn child were recognized by the original framers of modern international human rights law. There is no way now that any State can legitimately de-recognize them by permitting "lawful" medicalized or surgical killing of an unborn child—no State legislature nor any court of law has this authority. The concept of 'recognition' of human rights is absolutely integral to human rights law. It was recorded in the drafting history of the *Universal Declaration* that governments could neither grant human rights nor withdraw human

rights—they "could do no more than recognize the human rights which human beings by virtue of their being and destiny already possessed".

The principle of inherency is one of the founding principles of the architecture of modern human rights law. This consensus principle requires that human rights are recognized as inherent in each human being, not granted by external government or judicial decisions. The child's rights pre-exist birth – they "inhere" in the child's humanity.

The drafting team that enunciated the first principles of the *Universal Declaration*, affirmed that their "intention in the deliberate use of the terms "every person" or "everyone" throughout the Declaration was to extend the prohibition of discrimination in the application of every human right in the Declaration to every human being".

It was agreed in the *Universal Declaration of Human Rights* that:

•"it is essential…that human rights be protected by the rule of law" (Preamble)

•"Everyone has the right to recognition everywhere as a person before the law" (Article 6).

Indeed the child "before as well as after birth" has the right to recognition everywhere (in utero and ex utero) before the law (See *UN Declaration on the Rights of the Child*). Neither domestic governments nor domestic judiciaries have any authority to withhold human rights protection from any "members of the human family". Under the universal human rights principle of inherency, "Every human being has the inherent right to life…*" International Covenant on Civil and Political Rights*, Article 6 (1).

Universal, inherent, equal and inalienable human rights protection is never predicated on the size of the human being who is targeted for intentionally lethal attack, medically or surgically.

Both science and reason tell us that the victims of abortion are human beings. At fertilization, a new human life comes into being--no longer a generic bunch of cells but new life distinctively different from either the sperm or the egg. This new human being is now the child of identifiable parents, a child with a personal DNA now different from that human being's mother to whom the egg belonged and from that human being's father to whom the sperm belonged. This tiny new human being is not a potential human being but rather a unique new human being with potential—the potential to grow with singular continuity through each stage of human life--from zygote to embryo to fetus to newborn to toddler to young girl/boy to adolescent to young man or young woman, to middle-age and to old age. Through every stage of human life, both reason and science tell us that this individual is one and the same human being, the same life, the same individual, the very same uniquely personalized human identity.

By the time a mother discovers she is 'with child' and goes to an abortionist, there is no doubt that it is the young of the human species that is about to be aborted. 'fetus' is the medical term but the legal and social term is "unborn child'—a human being who can already be identified as a child, the son or daughter of a particular mother and a particular father, a child intimately related to his/her parents (and to forbears, uncles, aunts, siblings, cousins) genetically, biologically, genealogically.

Human rights protection from unprovoked lethal violence is not scaled according to size or status or "wantedness".

Our autonomy is limited by respect for the rights of others and for the security of all. Autonomous rights cannot be lawfully separated from the natural context of responsibilities to other more vulnerable human beings.

In human solidarity, the relationship between duties and rights remains valid for all human beings, including the distressed pregnant woman who even in her distress still owes a human rights duty towards her tiny daughter or son. Everyone has duties to the community. (Universal Declaration of human Rights (UDHR) Article 29 (1)).

This Bill ignores the humanity of the victims targeted for abortion and introduces the false idea that all human beings are not equal—that a mother's human rights may be exaggerated so that they blot out the duties she owes to the little daughter or son being nurtured in her womb—so that her abortionist may be commissioned to kill the little human being in her care and under her protection.

Protecting human beings targeted for abortion is primarily a Human Rights Issue

Of critical importance is that the Queensland Parliament should understand that this whole process of legalizing deliberate deprivation of the lives of selected unborn children is primarily a human rights abuse issue. This proposed Bill will run directly counter to Australia's firm and repeated commitments to provide legislative protection for maternity and for all children before birth. This bill, if brought into law, will fail to comply with a whole raft of fundamental UN States' obligations under international human rights instruments to which Australia has committed and subsequently should honour.

International human rights law overrides Queensland law where Queensland law fails to provide appropriate legal protection for the child before birth. This Bill's removal of legal protection for the child at risk of abortion amounts to an exclusionary act that purports to limit the right to life only to adults and to children after birth.

Such a limitation of or exception from a non-derogable right, the right to life, is inadmissible under the provisions of the *International Covenant on Civil and Political Rights* (ICCPR).

Article 4 of the *ICCPR* stipulates that no State party can derogate from the right to life even in times of "*public emergency*".

Article 50 of the *ICCPR* states that "*the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions*".

The Federation of Australia has ratified the I*CCPR*. Therefore decriminalization of arbitrary deprivation of life for a particular class of human beings (i.e. children before birth) is inadmissible under international human rights law. Such a broad, undifferentiated decriminalization of all abortions would introduce and comprise invalid limitations or exceptions to the right to life.

Relevant UN International Human Rights commitments include:

- Under the *International Covenant on Civil and Political Rights*, "every human being, [including every child in her/his mother's womb], has the inherent right to life. This right shall be protected by law. No one [including the smallest human beings] shall be arbitrarily deprived of his life" (Article 6 (1)). If the Queensland Parliament passes this Bill, then it will have abandoned its solemn duty to protect by law the inherent right to life of every human being, in particular the inherent

right to life of every human being deliberately targeted for extermination by abortion "treatments". In human rights discourse, an "inherent right" means that it belongs to the individual human being, irrespective of who she/he is, or what value she/he has for others. This Bill fails, too, to protect selected human beings at the embryonic or fetal stage of human life from being arbitrarily deprived of their lives. At issue is the palpable arbitrariness of the selection process by which our smallest human beings are drafted into two categories, those who are to be allowed to continue their lives and those who are to be deprived of their lives. There are no rational moral grounds upon which such a selection can be made without an unacceptable degree of arbitrary discrimination, *i.e*., without using criteria for selection that would not be acceptable at any other stage of human life.

- Under the *International Covenant on Civil and Political Rights*, each child from conception is recognized to have a right to life, separate to the mother's rights. Every embryonic child has a right to State protection from capital punishment: "sentence of death…shall not be carried out on pregnant women" (Article 6 (5)). The child in her/his mother's womb is recognized as being innocent of any crime and so the life of that child is to be preserved and protected by the State. The corollary of this article requires that the State recognizes the innocence of these human beings and preserves their right to life. This Bill fails to comply with this grave and fundamental human rights obligation.

Under the *International Covenant on Civil and Political Rights*, "no one shall be subjected to cruel, inhuman or degrading treatment" (Article 7). First, selection of small human beings being nurtured in their mothers' wombs to be targeted for killing constitutes inhuman and degrading treatment of those tiniest of human beings. It degrades i.e. downgrades these tiny human beings to the status of a disposable commodity to be used or manipulated for the putative good of others. Second, to be treated as chattels of their mothers constitutes degrading treatment of these tiniest of children. Abortionists can only proceed on the heinous assumption that the mother has absolute ownership, absolute property rights and disposal rights over her child. This is untenable.

- Under the *Universal Declaration on Human Rights (article 6) and* the *International Covenant on Civil and Political Rights (article 16)*, the right of everyone to be recognized everywhere as a person before the law is particularly pertinent for children before birth, for whom recognition is often curtailed by reason of immaturity (age), or disability. Legal personality means that children before birth must have full and unimpeded representation of their best interests in the legal institutions of their country for the purpose of vindicating their rights and obtaining protection against premeditated violation of their rights. The child before birth has a right to legal personality on an equal basis with the child after birth. This right is absolute and must be guaranteed in all circumstances and at all times. "Everyone has the right to recognition everywhere as a person before the law" confirms the right to legal personality of every human being before as well as after birth. Latinate versions of UDHR Article 6 retain from the initial drafts the term "juridical personality" which has significance for a true understanding of the English term "person before the law". The great French jurist Rene Cassin drafted the language of Article 6 and he explained:

> *Such a declaration might seem unnecessary if the most recent history did not offer an example of forms of slavery under which juridical personality had been withdrawn from certain individuals… they should be guaranteed certain elementary rights indispensable to their well-being and to their dignity (Third Session Fifty-Eighth Meeting 3)*

It may be understood, therefore, that Article 6 provides the necessary legal machinery to prohibit the "withdrawal of legal personality" from certain individuals such as slaves, or human beings in their mothers' wombs, or any other vulnerable individuals in situations where they are mistreated as 'property' not as human beings.

- Under the *UN Declaration on the Rights of the Child (1959)*, governments are obliged "to provide appropriate legislative protection for the child, before as well as after birth." The immutable "logical must" underlying this human rights directive is that the human embryo/human fetus must be recognized as a child at the earliest stages of life. Both the doctors contemplating an abortion and the biological parents must recognize that each particular embryo/fetus is a unique child with a unique human lineage—unique ties to the human family. The major significant distinction between a child in her/his mother's womb before birth and that same child in her/his mother's home after birth is a distinction of place. Human rights are universal. We deny that universality when we discriminate on the grounds of habitat. A human being is entitled to full human rights no matter where that human being is placed by those in authority over him/her—in gaol in Malaysia, in a re-education camp in China, in a sexual slavery racket in North Africa, in a deep freeze in a laboratory in Melbourne. Place must not be used as grounds for discriminating between rights of one human being and another.

- Under the *UN Convention on the Rights of the Child*. Australia has recognized

  (i) that governments have an obligation to safeguard and care for "the child before as well as after birth" (preamble);
  (ii) that "every child [i.e. before as well as after birth] has the inherent right to life" (Article 6); and
  (iii) that the child [*i.e.*, before as well as after birth] is to be protected from physical violence, and "cruel and inhuman treatment" (Articles 19 and 37). This Bill will not conform to these obligations.

- Under *the Convention on the Elimination of All Forms of Discrimination Against Women,* States' Parties, together with parents, are required to respect the fundamental principle underlying all human rights concerning the child at any stage of the child's existence. For parents: "In all cases the interest of the children shall be paramount" (Article 6 (2b)(2c)). This Bill flouts this obligation. As a state-sanctioned procedure, the deliberate killing of an unborn child is never in the best interest of that child. It flies in the face of the very nature of human rights to judge on discriminatory grounds of disability, age, "wantedness" and/or birth status [before birth or after birth] that violating the right to life of a child at the very earliest stage of existence is in the best interests of that child. The basic principle "the best interests of the child shall be the paramount consideration" requires the enactment of laws against all forms of deliberate harm in order to safeguard the healthy and normal development of every child.
  The Convention on the Elimination of All Forms of Discrimination Against Women also requires States' Parties, together with parents, to respect this principle underlying all human rights concerning the child [including the embryonic child]. For parents:

  "In all cases the interest of the children shall be paramount" (Article 6 (2b) (2c)).

  At the heart of the best interests of the child principle is the truth that children's rights are parents' duties. Consigning a child to medicalized killing is a dereliction of the duty of care owed by

parents to their children. An abortion deliberately intends to deliver a dead baby. The deliberate killing of the child in her/his mother's womb is not beneficial to the child or to her/his parents. The deliberate killing of their child will do nothing to relieve the parent's real pain and suffering that comes with the natural death of their child—it only adds to that pain and suffering that they did not keep the child in the comfort and loving care of her/his mother's womb for as long as naturally possible. Even pro-abortion advocates like Professor Lachlan de Crespigny admit that the mother's womb is "the ideal intensive care unit" for the child detected to have disabilities or life threatening conditions. Unfortunately, de Crespigny uses the effectiveness of the ideal intensive care conditions of the mother's womb for keeping the child with disabilities comfortable to argue illogically for the necessity to proactively attack and abort the child.

- Under *the Convention on the Elimination of All Forms of Discrimination Against Women,* States' Parties are required: "To ensure that family education includes a proper understanding of maternity…it being understood that the interest of the children is the primordial consideration in all cases." (Article 5(b)). The interest of the children is not the primordial consideration in this Bill. On the contrary, this Bill places the interest of the child in her/his mother's womb a very poor last—this Bill fails to even acknowledge the presence of the child whose life is to be exterminated by a "lawful" abortion . In addition, most certainly this Bill will not "ensure that family education includes a proper understanding of maternity" with the grave understanding that "the interest of the children is the primordial consideration in all cases". This Bill gives exactly the opposite public education dictum—that the perceived interest of the mother is the primordial consideration in all cases.

- Under the *Universal Declaration on Human Rights*, "Everyone" [including every child "before as well as after birth" "] has a right to medical care and a right to security "adequate for his health and well-being", both "in the event of disability" and "in circumstances beyond his control" (Article 25). This smallest of human beings is, of course, exceedingly vulnerable in circumstances way beyond the child's control, abandoned by the father and mother who have parented the child, and utterly powerless against the abortionist's lethal medical "care".

- Under the *Universal Declaration of Human Rights*, "everyone [including a small daughter or son being nurtured in her/his mother's womb] has the right…to share in scientific advancement and its benefits" (Article 27). This includes the right to the best benign health care, including fetal surgery and fetal medicine, where needed. In a humane society, there should be no place for "abortion pills" designed by medical researchers intentionally to poison tiny unborn children being protected and nurtured in their mothers' wombs. Chemical poisoning of an innocent defenceless human being is utterly barbaric. Administering poisoned medications to a little son or daughter in a mother's womb is cruel and inhumane. Violence against children is never 'necessary'. Their mothers' personal and social needs can and should be met by non-violent means.

- Under the Convention on the Rights of Persons with Disabilities (2007), Australia agreed to

    - reaffirm *the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination* (c); [This is significant for those States who continue to argue invalidly that a woman's "right to abortion" trumps the human rights of their children with disabilities who are at risk of abortion.]

- recognize *also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person* (h); [Abortion of a child on the basis of a disability comprises a discriminatory medical treatment that is a violation of the inherent dignity and worth of that particular child.]
- recognize *the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support* (j); [This is significant for the legal protection of the human rights of those children who are at risk of abortion on the grounds of what some abortion "providers" label as "gross foetal abnormalities". This term should be outlawed by the medical profession. These children at risk of abortion are children with disabilities "*who require more intensive support*" and States are to recognize *the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support.*]
- recognize *that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child* (r); [One of the *obligations to that end undertaken by States Parties to the Convention on the Rights of the Child* is the commitment *by reason of his physical and mental immaturity, to provide special safeguards and care, including appropriate legal protection before as well as after birth*. The significant commitment here towards children who are at risk of abortion because of disabilities is to provide legal protection for these children *on an equal basis with other children* i.e. on an equal basis with children after birth and also with children who do not have disabilities.]
- Laws that condone selective abortion violate the Article 3 General Principles of the Disabilities Convention—selective abortion on the basis of disability violates the principles of

    - non-discrimination (3b),
    - full and effective inclusion in society (3c),
    - respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (3d),
    - equality of opportunity (3e) and
    - respect for the right of children with disabilities to preserve their identities (3h).

    Proposed health laws for Queensland must be compatible with international human rights commitments to providing legal protection for all children with disabilities, *before as well as after birth,* and to the most recent obligations as set forth in the *UN Convention on the Rights of Persons with Disabilities (2007)*.

    Developing eugenic screening tests intended to be used in identifying human beings in their mothers' wombs for destruction on account of a genetic or chromosomal "defect" is not consistent with human rights commitments. The incidence of some kind of deformity or disease in a small human being does not constitute a justification for harming or destroying a human life. The clear tradition in all the relevant international human rights instruments insists that physical or mental disability does not constitute an exception—every child "without any exception whatsoever" is entitled to all human rights.
    Every child includes the embryonic child who is discovered to have a physical or genetic impairment. The *Declaration on the Rights of the Child* Principle 5 requires that the child who is physically or mentally handicapped be given the special treatment and care required by his particular condition.

The *Declaration of the Rights of the Child* (with its clear directive to provide legislative protection for the rights of every child before as well as after birth) is that diagnosis of a disability in a child before birth (including at the embryonic stage) is not to be counted as grounds for destruction, as grounds for denying that child "the same rights as other human beings".

Section IV

This Bill's concept of the "lawfulness" of abortions is inconsistent with international legal principles

(i) There is compelling evidence in the preparatory work for the *Universal Declaration* and the circumstances of its conclusion that the meaning of 'child' is inclusive—it was recognized at the time of negotiation of the *Universal Declaration* text and affirmed in the historical context that the child before as well as after birth possesses inherent and inalienable rights.

(ii) On November 20th, 1959, the UN General Assembly members (including Queensland as part of the Federation of Australia) reaffirmed specifically and definitively that the *Universal Declaration* "recognized" the child's need, "by reason of his physical and mental immaturity", to be provided with "special safeguards and care, including appropriate legal protection before as well as after birth". (*UN Declaration on the Rights of the Child*)

(iii) The *Convention on the Rights of the Child* (1989) in its preamble reaffirmed what was agreed in the Declaration: "The child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". Children, defined as under 18 (art. 1), require "legal protection, before as well as after birth," (preamble para. 9) of their "right to life" (art. 6) as well as their right to "pre-natal and post-natal health care" (art. 24.2.d). In addition, children should not be discriminated against on the basis of "sex" or "birth" (art. 2).

(iv) In the 1947-8 negotiations of the *Universal Declaration*, one of the first things agreed by Australia and the international community was that the "innocent unborn child" was to be legally protected.

(v) In the drafting of Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR), the only recorded attempt to introduce abortion as an exception to the right to life occurred in the Working Group's 2nd Session (1947). It was put to a vote in the Commission on Human Rights and was resoundingly defeated. A principle was adopted in which **the only exception to the unlawfulness of deprivation of a life** was to be in the execution of the sentence of a court following on conviction of a crime for which the penalty is provided by law.

(vi) The *International Covenant on Civil and Political Rights* drafting history records repeatedly and irrevocably that protection of the law is to be "extended to all unborn children" (See 5th Session (1949), 6th Session (1950), 8th Session (1952) and 12th Session (1957) of the UN Commission on Human Rights). At all these sessions, the travaux préparatoires (drafting history) for the International Covenant on Civil and

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Political Rights refer specifically to the intention to save the life of the unborn child in recognition of the human rights principle that legal protection should be extended to all unborn children. For example: "The provisions of paragraph 4(5) of the draft article aimed at the protection of the life of the unborn child whose mother was sentenced to death; that protection should be extended to all unborn children." (See for example A/C.3/SR.810 para. 2; A/C.3/SR.811 para. 9; A/C 3/SR.812 para. 7; A/C.3/SR.813 para. 36; A/C 3/SR 815 para. 28. Again in the 12th Session (1957): "The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was 'to save the life of an innocent unborn child'."(See for example A/C.3/SR.819 para. 17 & para. 33.)

(vii) The drafters of the *Universal Declaration* built the whole structure of international human rights law on the agreed premise that human rights are logically antecedent to the rights enumerated in various systems of positive law and are held independent of the State. They established that human rights 'constitute a law anterior and superior to the positive law of civil society'.

Inconsistency of the Bill with fundamental legal principles of necessity and proportionality

Clause 21 of the Bill, entitled *Abortion on woman more than 24 weeks pregnant*, is indefensible in that it does not recognize that a child in her/his mother's womb from 24 weeks of gestation right up to birth as being in need of protection from the lethal surgery being made "lawful" here.

> *A doctor may perform an abortion, or direct a registered nurse to perform an abortion by administering a drug, on a woman who is more than 24 weeks pregnant only if the doctor—*
>
> (a) *reasonably believes the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated;*

Why no mention here of the *risk of injury* to the mother's little daughter or son—why is the child victim disappeared? In every pregnancy that is deliberately terminated, the life of a small daughter or son is deliberately exterminated. Here in this Bill permission is given to a doctor or a registered nurse to decide that a lively little human being at the late-term fetal stage of life who is being protected and nurtured in the safe environment of her/his mother' wombs is to be deliberately killed.

Contrary to the stated purpose of the proposed Bill *to provide clarity*, it provides only a speculative comparison of the risk of injury to the physical or mental health of the woman : the risks of continuation of the woman's pregnancy versus the risks "if the pregnancy were terminated". Where is the logically necessary complementary assessment of the "risk of injury" to the targeted subject of the abortion—the small daughter or son in her/his mother's womb? Where are the common law necessity and proportionality tests proving

(i) that the deliberate killing of a little daughter or son is truly "necessary" to save the mother's life and

(ii) that the deliberate taking of her daughter's life or her son's life is properly "proportionate" to the injury the child' s mother may suffer or may not suffer to her "physical or mental health" if her daughter or son is not deliberately killed.

Currently, there is little serious scrutiny of the lawfulness of Australia's annual abortion toll which appears inordinately large in view of the high incidence of reasonably good psychological and physical health that most women of child-bearing age in Australia enjoy in comparison with women of same age in other areas of the world. The medical profession itself seems to be either powerless or reluctant to scrutinize the excessive number of doctors who appear to be lying in their teeth when they diagnose some one in four Australian mothers each year as being in such grave danger of death or serious injury to health that the children in their wombs must be aborted.

At the present time, at least some Australian states and territories appear to be utilizing the empty forms of legal process to condone the extermination of human beings in their mothers' wombs on an unconscionable scale. Termination of the lives of large numbers of unborn children each year is being funded by the Federal Government in the conveniently naïve belief that every State and Territory in Australia is dutifully ensuring that all abortion providers are always performing "lawful" abortions.

Legal corruption and medical fraud on this scale cannot be maintained indefinitely.

Investigation of the reality of abortions on demand in many areas must not be hampered by false pleas to respect doctor/patient privacy.

There are public duties as well as 'private' rights.

Lethal child abuse of small defenceless human beings in the 'privacy' of an abortion clinic is everybody's business.

Privacy cannot be invoked to conceal human right abuse of children, including violations of their rights to prenatal care, survival and development. Human rights law has consistently rejected the right to privacy as a defence against human rights violations by adults in positions of power over children in positions of dependency.

State and Territory law here in Australia must endeavour to encourage all doctors to provide both mothers and their babies with good pre-natal health care—in a good health system such as here in Australia, it should be only in the most exceptional cases, that the life and health of both the mother and her baby cannot be saved.

The violence of abortion is intensely physical and can be cruelly painful.

The pain of abortion for mother and child cannot remain hidden—it is always a cruel business.

Cruelty is more than the absence of loving care—it is treatment that is insensitive to the harm inflicted. The cruelty of abortion lies in its intention and purpose to do harm to the unborn child; it is an act that withdraws love and care and good-will from one of the newest most defenceless members of the human family. Abortion of a tiny thriving human being *in utero* is never an ethically neutral act—rather it is actively callous, even merciless. It is medical maltreatment of the child, and requires a hardening of heart in any normal human being who would inflict such maltreatment. Even the most sophisticated rationalization cannot cloak the fact that it takes ruthlessness to deliberately inflict such cruelty on these smallest children.

Reform of Queensland abortion law must commit:

1. To review the current laws and judicial interpretation of those laws so that, in line with the common law method of legal interpretation, all public officials and public and private abortion providers must justify actions by reference to both principles of necessity and proportionality when the intended outcome of their interference results in deprivation of the life of an unborn child.

2. To ensure that before deprivation of life on grounds of necessity is invoked all other measures have been exhausted. Necessity is what remains when all choice has been eliminated. State condoned deprivation of life; whether capital punishment or abortion, is a very, very serious matter—it should never be trivialized as "a choice".

3. To ensure that the principle of proportionality also is applied justly taking into equal consideration the harm that threatens both the mother and her child. "A life for a life…" Anything less than the saving of the mother's life is not strictly proportional to the harm done to the unborn child, and may be arbitrary and unjust. If the life of the unborn child is unavoidably destroyed in the process of saving the life of the mother—that is justified. If the life of the unborn child is destroyed for any lesser reason, intentional deprivation of the child's life should be investigated as a potential human rights violation.

Section V

Seven reasons rendering inadmissible in this Bill the concept of abortion as a "lawful" exception to the right to life principle

Given that

- in the drafting of the right to life principle in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR), the only recorded attempt to introduce abortion as an exception to the right to life occurred in the Working Group's 2nd Session (1947) ;
- it was put to a vote in the Commission on Human Rights and was resoundingly defeated;
- a principle was adopted in which **the only exception to the unlawfulness of deprivation of a life** was to be in the execution of the sentence of a court following on conviction of a crime for which the penalty is provided by law;
- the UN General Assembly (including Australia) has worked for so long and continues to work so hard to abolish capital punishment as the single exception to the right to life principle in ICCPR Article 6 (2)
- to introduce a new exception to universal legal protection of the non-derogable right to life—"the supreme right" and "basic to all human rights" (Human Rights Committee General Comment No. 6) requires a formal vote by the whole General Assembly. To introduce such an amendment requires strict adhesion to the rules for amendment as set out in Article 51 (1) of the ICCPR:

> *Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present*

Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

then it is logically incoherent and legally prohibited to introduce in a State Parliament such radical change to the universally agreed right to life principle. The right to life enunciated in the first paragraph of Article 6 , it was agreed, is "the supreme right" from which no derogation is permitted "even in time of public emergency". To introduce routine abortions of targeted unborn children as a new exception to the right to life is not compatible with such an understanding.

(1) New exception contravenes founding principles of human rights Covenant law

Introduction of the proposed decriminalization of abortion in this Bill is premature and should not proceed until the basic architecture of Covenant law to which Australia has committed is clarified, especially the question of whether the Queensland parliament has the authority to remove any particular group of human beings (such as children before birth) from non-derogable right to life protections for "every human being".

It is historical fact that the whole architecture of modern international human rights law is deontologically based on human rights that are inherent and inalienable. Inherency and inalienability are core values in the opening recognition "of the inherent dignity and of equal and inalienable rights of all members of the human family" which appears in the Preamble of all three instruments of the *International Bill of Rights* and was characterized by the Commission of Human Rights as "a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own."[11]

The Commission established that human rights "constitute a law anterior and superior to the positive law of civil society".[12]

To attempt to remove from any group of human beings the protective principles of inherency and inalienability is to white-ant the deontological natural law foundations of modern international human rights architecture. This is not to be tolerated through unauthorized redefinition via radical re-interpretation by any legislature.

For when the International Bill of Rights goes on to say that *it is essential…that human rights should be protected by the rule of law,* it is clear that no one may remove the human rights of the unborn child from the protection provided by the rule of law. The term "no one" means no sovereign country, no state in a Federation[13], no legislature, no judiciary, no human rights committee—none of these has the authority to de-recognize the human rights of any individual human being or any selected group of human beings.

[11] General Assembly Official Records, United Nations, A/2929 Chapter III para. 4.

[12] United Nations, Official Records of the General Assembly (GAOR) , Tenth Session, Annexes, (1955) A/2929 Chapter III para. 6.

[13] *ICCPR* Article 50

(2) The Queensland legislature must respect original obligations self-imposed on States Parties

The original nature of the general legal obligation agreed by States Parties to the Covenant is discerned in the Human Rights Committee's General Comment 31 to "follow from the fact that the 'rules concerning the basic rights of the human person' are *erga omnes* obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms."

To promote proper respect, the present Queensland legislature needs to revisit what was agreed in General Comment 29, which solemnly reaffirmed "recognition" of article 6 as a fundamental right "ensured in treaty form in the Covenant", as bearing the nature of a peremptory norm of international law (para. 11); and that "article 6 of the Covenant is non-derogable in its entirety" (para. 15). Furthermore, in Footnote 5, the Committee notes that the Convention on the Rights of the Child does not include a derogation clause. "As article 38 of the Convention clearly indicates, the Convention is applicable in emergency situations." Discriminatory exclusion of targeted children before birth from legal protection against arbitrary deprivation of life is a prohibited activity:

- first, as an activity aimed at the destruction of this right which was "recognized" by the Universal Declaration of Human Rights (reaffirmed in the UN Declaration on the Rights of the Child (1959) and then recorded clearly and irrevocably in the drafting history of in Article 6 (5) of the International Covenant on Civil and Political Rights.[14]
- Second, as an act aimed at the limitation of the right to life to children from birth only and not as was "recognized in the Universal Declaration of Human Rights"—that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".[15]

(3) New exception to the right to life denying legal protection to children targeted for abortion not compatible with the non-discrimination principle

Discrimination in the application of the right to life). But the principle of non-discrimination "without distinction of any kind", of inclusion of "all members of the human family" [ICCPR article 2(1)], is not to be overturned by domestic pro-abortion legislation.

It is critical that the Queensland legislature re-commits to the original principle of inclusion in the definition of human rights and in the universal application of these rights to "all members of the human family"[16] and especially to all children "without any exception whatsoever"[17] and "without

[14] Bossuyt, Marc J., *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights*, Dordrecht, Martinus Nijhoff Publishers, 1987, A/C.3/SR.810 para. 2; A/C.3/SR.811 para. 9; A/C 3/SR.812 para. 7; A/C.3/SR.813 para. 36; A/C 3/SR 815 para. 28.

[15] See Rita Joseph: "*Human Rights and the Unborn Child"* (Leiden & Boston, Martinus Nijhoff, 2009) Chapter 1: UDHR Recognition of the Child before Birth: Analysis of the Texts pp.1-6; and Chapter 2: UDHR Recognition of the Child before Birth: The Historical Context pp. 7-46.

[16] "…recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

[17] UN Declaration on the Rights of the Child, Principle 1: "Every child without any exception whatsoever is entitled to these rights …"

discrimination of any kind"[18]. And the Committee needs to reaffirm that the drafters of the Covenant recognized that all members of the human family, 'every human being", "everyone"[19] including the unborn child[20], has the inherent right to life, to be protected by law from arbitrary deprivation[21], and that this right is non-derogable.[22]

(4) New exception to the right to life for children targeted for abortion distorts the "ordinary meaning" requirements (Vienna Convention)

To remove the right to life protections for a group of human beings targeted for abortion constitutes a significant departure from the original meaning of Article 6—the ordinary meaning of "every human being has the inherent right to life."

Such a radical change to Article 6 indicates a lack of respect for the text of a treaty, which has been most carefully drafted by States Parties. In this regard, the failure in this Bill to honour the principle to provide protection to every human being, should be noted and marked as a departure from the ordinary meaning of the words in the text of Article 6. It contradicts and undermines the original principles and concepts of the agreed language which States Parties negotiated and ratified. The language is misleading in that it represents the "performance of an abortion" –intentionally lethal medical interventions—as "lawful" . Such lethal ''performances" are not genuine medical services to the living child *in utero* supporting her/his right to life but rather the illicit means of facilitating arbitrary deprivation of life on a living patient in order to transform that living patient into a corpse. It is not a medical treatment of the patient — it is a **killing** of the smaller patient using medication.

The right to life is existentially a fundamentally different concept to the right "to perform an abortion". It is misleading for this Bill to reinterpret the right to life as including a right "to perform an abortion on a woman who is more than 24 weeks pregnant" on the putative grounds that the doctor "reasonably believes the continuation of the woman's pregnancy would involve greater risk of injury to the physical or mental health of the woman than if the pregnancy were terminated". There is a dishonesty here in the pretence that the pregnancy being terminated is childless. The Queensland legislature, no less than the States Parties who have ratified the Vienna Convention on the Law of Treaties, is bound to follow the rules of interpretation therein. The long standing principles of equal protection of the right to life for 'everyone" (including the most powerless (children before birth) is recognized in the Covenant.

It is time for the Queensland parliament to reject the current promotion in this Bill of controversial dehumanizing language such as describing the killing of an unborn child as "causing a woman's

[18] UN Convention on the Rights of the Child, Article 2.

[19] Peter Heyward, the Australian member of the drafting team that enunciated the first principles of the Universal Declaration, affirmed that **their intention in the deliberate use of the terms "every person" or "everyone" throughout the Declaration was to extend the prohibition of discrimination in the application of every human right in the Declaration to every human being."** See Johannes Morsink: "Women's rights in the Universal Declaration", *Human Rights Quarterly*, Vol. 13, p.230

[20] International Covenant on Civil and Political Rights (ICCPR), Article 6(5).

[21] International Covenant on Civil and Political Rights (ICCPR), Article 6(1).

[22] ICCPR Article 4(2).

miscarriage" and as a "terminated" pregnancy. Failure to acknowledge that the performance of an abortion causes the death of a child is a failure to respect the inclusive spirit of the right to life article in the modern human rights instruments which we have ratified. .

It is not in the competency of any legislature to disappear the unborn child from human rights protection.

(5) Legalizing "performance of an abortion" contravenes principle that no one is to be "arbitrarily deprived of life"

The law must ensure that no one is arbitrarily deprived of his life. Regarding the concept of arbitrariness, UN Human Rights Committee's *General Comment No 16* explains that it is intended to guarantee that "*even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant...*" Children before as well as after birth may not be deprived "lawfully" of their lives. Laws that arbitrarily deprive these children of their lives are bad laws, impermissible because they allow for unjust deprivation of lives—the only just deprivation of life allowed for in the *ICCPR* under very limited conditions relates to State imposition of the death penalty for only the most serious crimes, and only after a final judgment rendered by a competent court.

From the very beginning of the drafting of the founding human rights instruments, a clear understanding of the term "arbitrarily" was established. The drafting records show that after considerable debate, it was concluded that the word 'arbitrary' should be interpreted as "without justification in valid motives and contrary to established legal principles."[23]

Laws that pretend to establish the legality of routine medicalized killing of suicidal persons or unborn children targeted for abortion are

- *Without justification in valid motive*

  They aspire to do good (relieve suffering and/or stress) by doing evil (arbitrary deprivation of life); and

- *Contrary to established legal principles*

  They contravene the established legal principle that the state may condone deprivation of life only for those who are judged guilty of serious crime. They contravene also the established human rights legal principles of the inalienability and inherency of the right to life.

(6) New exception to the right to life contravenes principle of inalienability

Laws facilitating medicalized killing in the form of abortion cannot be promoted as a legitimate response to maternal distress as it is in violation of the fundamental human rights principle of inalienability. **Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request or at their mothers' request.** That is the meaning of the 'inalienable' right to life.

Natural death (such as in a miscarriage) is an unprovoked, spontaneous even. Human rights are applicable to the living. For as long as unborn children are alive in their mothers' wombs, theirgene inherent and inalienable right to life is to be protected by law.

[23] « …arbitraires (c'est-à-dire sans justification pour des motifs valables et contraires à des principes juridiques bien établis)… » Verdoodt, Albert, *Naissance et Signification de la Déclaration Universelle des Droits de l'Homme*, Société d'Etudes Morales, Sociales et Juridiques, Louvain-Paris, Editions Nauwelaerts, 1964.p.143

Other than strict and very specific provisions for the death penalty, no other "limitation" [ICCPR Article 5 (1)] is allowed on the right to life—certainly there is no provision for legalized killing of unborn children.

It is the essential nature of all human rights that they are inalienable. The opening paragraph of the *Universal Declaration* proclaims:

> *Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…*

The right of the child before birth to legal protection is one of the equal and inalienable rights of all members of the human family. No one may destroy that right, nor deprive the child of that right—that's what inalienable means. And when the Preamble goes on to say:

> *…it is essential…that human rights should be protected by the rule of law*

it is clear that no one may remove the human rights of the child before birth from being protected by the rule of law.

The human rights recognized in the *Universal Declaration* may not be revoked. To undermine or attempt to revoke any of these human rights set down in this foundation document of modern international human rights law is to undermine the whole international human rights legal system. If it is permissible to withdraw legal protection for the human rights of any one class of "*members of the human family*" (such as the child before birth), then it is permissible to withdraw legal protection for any other class (such as the child after birth, the child with disability, the Jewish child, the middle-aged woman with dementia, the old man with incontinence…).

Withdrawal of legal protection of the human rights of the child before birth (which includes the embryonic child) is not permissible for it is tantamount to the deliberate denial of their human rights which have been formally recognized. Destruction of human rights recognized by the *Universal Declaration* is not permissible—not under any circumstances. This is made amply clear in *Article 30* of the *Universal Declaration of Human Rights:*

> *Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

Nothing in this Declaration may be interpreted as implying for any State, group or person (i.e. any State legislature or judiciary, any group, any law reform association, any person, any doctor, any judge, even the parents of children at risk) *any right to engage in any activity* (such legalizing the deliberate killing of human beings in their mothers' wombs) *or to perform any act* (such as facilitating the abortion of the lives of these smallest human beings) *aimed at the destruction of any of the rights and freedoms set forth herein.*

(7) New exception to the right to life contravenes principle of inherency

The principle of inherency guarantees the human rights of every human being. Neither domestic governments nor judiciaries have any authority to withdraw human rights protection from any "members of the human family". Under the universal human rights principle of inherency, the child's rights pre-exist birth – they inhere in the child's humanity.

Children in their mothers' wombs retain their humanity, their inherent dignity and worth which must never be denied under the rule of law by withdrawal of their human rights protection. The term "inherent dignity" applied in the spirit and purpose of the *Universal Declaration* means that every human being has an immutable dignity, a dignity that does not change with external circumstances such as levels of personal independence, satisfaction or achievement, mental or physical health, or prognoses of quality of life, or functionality or "wantedness". There is no conceivable condition or deprivation or mental or physical deficiency that can ever render a human being "non-human". Pejorative terms such as "just a bunch of cells" or "a non-person" or "a parasite feeding on its host's body" cannot justify violation of the human rights of the small victims of abortion. Such prejudices cannot destroy *their inherent dignity.* As long as a human being lives, she or he retains all the human rights of being human, all the rights that derive from her or his inherent dignity as a human being.

Conclusion

Human rights belong equally to every member of the human family at every stage of development or decline. "Every human being has the inherent right to life…"

To be eligible for membership of the human family, one has only to be a human.

Both reason and science confirm that the mother's unborn child is already in existence, being protected and nurtured in her/his mother's womb. We can locate the child within definite co-ordinates of space and time. We can identify the child's father, and whether the child is a son or a daughter. We can ascertain long before birth that the child is a unique member of the human family, biologically, genetically, and genealogically.

Ultrasound technology, together with biology, embryology, foetal surgery, and examination of the human remains of an abortion, all tell us that the victim targeted for abortion is a human being, belonging to the human family, a human being who can be identified as a daughter or son, a 'who' not a generic 'thing'.

True justice requires that elective abortions and assisted suicide be recognized and treated not as harmless, idiosyncratic, personal 'choices' but as abusive practices, as human rights violations perpetrated by individuals and involving the complicity of politicians, judges and others.

It is not the act of being born--it is not age or size or independence or being 'wanted' that confers human rights.—it is just being a human.

This is the irrevocable legal basis of all human rights.

This Bill does not conform to this legal basis of human rights and should be withdrawn.

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